

Appl. No. 09/915,865

Attorney Docket No. 2009-174 (81841.0155)
Customer No. 26021

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Richard R. Sharpe, Jr., et al.

Serial No.: 09/915,865

Confirmation No.: 7692

Filed: July 26, 2001

For: **METHOD AND APPARATUS FOR
OBJECT-ORIENTED REAL-TIME
MECHANICAL CONTROL OF
AUTOMATED CHEMISTRY
INSTRUMENTS**

Art Unit: 1748

Examiner: Brian J. Sines

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450 on

February 28, 2006

Date of Deposit

Rhonda Hurt

Name

Rhonda Hurt 2/28/06

Signature

Date

PRE-APPEAL BRIEF REQUEST FOR REVIEW

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby requests a Pre-Appeal Brief Conference to review the decision dated November 30, 2005 of the Primary Examiner, finally rejecting claims 7, 8, and 10-14. This request is being filed with a Notice of Appeal.

The Pre-Appeal Brief Conference is requested for the following reason:

Independent claim 7 is directed to an apparatus for mechanical control of an automated immunochemistry or chemistry instrument which has a multiplicity of subsystems for performing immunochemistry or chemistry assays.

The Examiner states that the cited prior art, Layne teaches the scheduler of claim 7. The Applicant respectfully disagrees. The Applicant submits that the

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scheduler of the present invention has features that are not taught or suggested by Layne.

Claim 7 is as follows:

An apparatus for mechanical control of an automated immunochemistry or chemistry instrument which has a multiplicity of subsystems for performing immunochemistry or chemistry assays, the apparatus for mechanical control comprising:

a mechanical control system having both object-orient features and real-time features for control of the operations of the multiplicity of subsystems; wherein the subsystems operate on, transform, or transfer passengers; wherein said mechanical control system comprises a scheduler configured for determining the times when one or more sets of operations of said multiplicity of subsystems must be executed; wherein said scheduler is configured for determining whether said multiplicity of subsystems is available for performing said immunochemistry or chemistry assays; and

a passenger template base class comprising facilities configured for passenger creation, destruction, enumeration and state recovery.

According to claim 7, the Applicant's scheduler is "configured for determining the times when one or more sets of operations of the multiplicity of subsystems must be executed" and "for determining whether said multiplicity of subsystems is available for performing said immunochemistry or chemistry assays."

The Examiner in the advisory action dated February 7, 2006, at page 2, lines 4-9 states,

"Regarding claim 7, Layne does teach the incorporation of a scheduling feature, e.g., sequence task controllers (136), within the disclosed automated testing apparatus. Layne does teach that the apparatus uses a task controller to determine if it has enough materials, such as reagents or device components, such as container

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tubes, available to complete test procedures. Layne further teaches that the apparatus generates start-up times and optimizes tasking sequences performed by the apparatus (see col. 9, lines 40-59)."

Applicant respectfully submits that the language used in Layne does not teach or suggest the scheduler of the present invention.

For example, Layne teaches,

"Task sequence controllers (TSCS) 136 are intermediate level devices which use tools from operations research to govern intricate flows of supplies and samples through automated instruments."
(Layne, column 9, lines 41-45).

There is no teaching or suggestion in Layne that the sequence controllers are i) configured for determining the times when one or more sets of operations of the multiplicity of subsystems must be executed and ii) configured for determining whether said multiplicity of subsystems is available for performing said immunochemistry or chemistry assays.

Furthermore, the language used in Layne suggests that it is either technicians or engineers who input what tests should be run and it is not the task sequence controllers, themselves, that are configured for determining what subsystems are available for performing specific assays.

For example, Layne states,

"Before performing actual tests, computer simulations mimic SLM 134 controllers and adhere to critical timing events of the candidate tests procedures. This virtual instrument then generates start-up times and optimizes the sequence by which all tasks take place. TSCs users include laboratory technicians who load materials into automated instruments and supervise their performance on a daily basis (complete runs can amount to about 10,000 tasks, for example, which far surpass the manual scheduling capabilities of humans) and engineers who develop and debug new instruments or

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look for ways to improve on existing ones. TSCs 136 are capable of dynamic retasking, which, for example allows adding and subtracting assays while automated instruments are up and running--a particularly useful feature for clinical work." (Layne, column 9, lines 45-59).

Therefore, Layne fails to teach or suggest a scheduler that, by itself, is capable of both determining the times when one or more sets of operations of the multiplicity of subsystems must be executed and determining whether said multiplicity of subsystems is available for performing said immunochemistry or chemistry assays.

In view of the foregoing, Applicant respectfully submits that there is a clear error in the Examiner's rejection.

Respectfully submitted,

HOGAN & HARTSON L.L.P.

Date: February 28, 2006

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